

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

MARY CHISHOLM,
Plaintiff

v.

CITY OF WARWICK by and through its
Treasurer, **LYNNE PRODGER,**
WARWICK PUBLIC SCHOOLS,
Defendants

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C.A. No.

COMPLAINT

I. Introductory Statement

This action is brought by the Plaintiff seeking compensatory damages as well as attorney's fees, litigation expenses and other equitable relief, to remedy unlawful discrimination in employment the Plaintiff suffered in violation of the Rehabilitation Act of 1973, Section 504, 29 U.S.C. §794 ("Rehabilitation Act") and the Rhode Island Whistleblowers' Protection Act ("RIWPA"), R.I.G.L. §28-50-1, *et seq.*

II. Parties

1. The Plaintiff is a resident of the Town of Seekonk, County of Bristol, Commonwealth of Massachusetts.

2. Defendant City of Warwick ("City") is a duly authorized and organized municipality pursuant to the laws of the State of Rhode Island and is sued by and through its Treasurer, Lynne Prodger, the official designated by State Law, R.I.G.L. §45-15-5, to be named in a claim for relief against the City.

3. Defendant Warwick Public Schools ("WPS") is a school district located within the City and maintains a principal place of business located at 69 Draper Avenue, Warwick, Rhode Island 02889.

III. Jurisdiction

2. This Court has jurisdiction over the Plaintiff's claims through diversity jurisdiction pursuant to 28 U.S.C.A. §1332(a) insofar as the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and there is diversity of citizenship between the Plaintiff and the Defendants. In addition, this Court has jurisdiction over the Plaintiff's claims under the Rehabilitation Act pursuant to 28 U.S.C. §1331 and supplemental jurisdiction over the Plaintiff's claims under the RIPWA pursuant to 28 U.S.C. §1367.

IV. Venue

3. Venue is proper in this Court insofar as a substantial portion of the events or omissions giving rise to the within claim occurred in Rhode Island in compliance with the requirements set forth in 28 U.S.C. §1391.

V. Material Facts

4. The Plaintiff is certified as a regular education teacher and she maintains a master's degree in reading. She is also National Board Certified in teaching.

5. In or about September, 1990, the Plaintiff was hired by Defendants WPS and/or City as an elementary school teacher.

6. In September 1991, the Plaintiff was assigned to teach at the Oakland Beach Elementary School ("School") located in Warwick, Rhode Island.

7. From September, 2016 to present, the Plaintiff has taught first grade at the School.

8. During all relevant time periods, the Plaintiff's work performance was excellent, as evidenced, in part, by her positive written evaluations, being awarded Walmart Teacher of the Year, and being named 1st runner-up R.I. Teacher of the Year.

9. During her tenure at the School, the Plaintiff volunteered for several positions at the School, including Yearbook Advisor, National Elementary School Honor Society Advisor, Feinstein Good Deed Coordinator, and a member of the School Improvement Team.

10. During the 2018-2019 academic school year, the Plaintiff's classroom was and continues to be a "collaborative class," whereby the core academic class is taught by both a regular education teacher—the Plaintiff—and a special education teacher.

11. Under this "collaborative class" model, six (6) disabled students with special needs have been placed in the Plaintiff's classroom.

12. Although the Plaintiff is responsible for the general education of these six (6) disabled students, the special education teacher co-teaching with the Plaintiff is responsible for providing specialized instruction to these students, including overseeing the compliance and proper implementation of the Individual Educational Programs ("IEPs") of the six (6) disabled students, pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*, as amended ("IDEA"), and the federal regulations promulgated thereunder, and the R.I. Children With Disabilities Act, R.I.G.L. §16-24-1, *et seq.* ("RICWDA") as well as the R.I. Regulations Governing the Education of Children with Disabilities ("State Regulations").

13. During all relevant times, the Plaintiff's students with disabilities were the beneficiaries of federal funding subject to Section 504 of the Rehabilitation Act and were "qualified individuals" as that term is defined under the Rehabilitation Act.

14. During all relevant times, the Plaintiff was acting on behalf of and for the benefit for the disabled students assigned to her classroom.

15. During the 2017-2018 academic school year, the special education teacher co-teaching with the Plaintiff was absent sixty-eight (68) days due to long-term and short-term absences (i.e., 1 or 2 days per week).

16. Since the beginning of the 2018-2019 academic school year, the special education teacher co-teaching with the Plaintiff has been absent fifty-five (55) days due to long-term and short-term absences.

17. During the special education teacher's long-term absences, Defendant WPS assigned a substitute regular education teacher to the Plaintiff's classroom, but has never provided a substitute special education teacher to the Plaintiff's classroom during either the 2017-2018 academic school year or the 2018-2019 academic school year.

18. On several occasions during both the 2017-2018 and 2018-2019 academic school years, the Plaintiff complained, both verbally and in writing, about the lack of a special education teacher in her classroom to Defendant WPS and its employees, including, but not limited to, Jennifer Connolly, PhD, Director of Special Services of WPS, Lynn Dambruch, Director of Elementary Education at WPS, and Susan Vitali, Human Resource Coordinator.

19. In both October, 2018 and March, 2019, the Plaintiff complained to Dr. Connolly about the lack of a special education substitute in her classroom. In response, Dr. Connolly told the Plaintiff that there was a lack of special education substitutes in Warwick and throughout the entire State of Rhode Island and that there was nothing she could do to provide assistance.

20. In addition, on occasions when the School had a substitute teacher shortage, a representative of Defendant WPS' Human Resources Department contacted the Plaintiff's classroom and pulled the regular education substitute from the Plaintiff's classroom. The Plaintiff often complained that two (2) teachers were required to be in the classroom as it was a "collaborative class."

In response, the Plaintiff was told that having two (2) teachers in her classroom was not considered a “priority.”

21. As a result of the special education teacher’s absences and the Defendants’ refusal to assign a certified special education substitute teacher to the Plaintiff’s classroom during such absences, the disabled students, assigned to the Plaintiff’s classrooms during both the 2017-2018 and 2018-2019 academic school years, were not provided the requisite special education services and aids as required by the IDEA, the RICWDA, and the State Regulations.

22. During the 2018-2019 academic school year, the six (6) disabled students in the Plaintiff’s classroom failed to receive the following amount of specialized education service hours:

<u>Student</u>	<u>No. Of Service Hours Per Day In Accordance With IEP</u>	<u>No. Of Days Not Provided IEP Services</u>	<u>Total Hours</u>
Student A	6.5 hours	55 days	357.5 hours
Student B	4.0 hours	55 days	220 hours
Student C	4.0 hours	55 days	220 hours
Student D	2.5 hours	55 days	137.5 hours
Student E	1.5 hours	44 days	66 hours
Student F	4.0 hours	18 days	72 hours

23. The Defendants did not provide the Plaintiff and her special needs students with adequate support to properly teach or supervise the instruction of disabled students assigned to her, and failed to follow the proper policies, practices and procedures required under the IDEA, the RICWDA, and the State Regulations for the education of disabled students within Defendant WPS.

24. The Plaintiff reported situations in which the School’s disabled students were not provided a free and appropriate education that was equal or equivalent to services provided to nondisabled students, and were not given adequate facilities or services, in violation of federal and state law.

25. In particular, the Plaintiff made reports to the Defendants and her supervisors, including Dr. Connolly, and Ms. Dambruch, Christine Cobb, Assistant Director of Special Services at Defendant WPS, and Jennifer Evans, District Behavior Specialist at Defendant WPS, that Defendants City and/or WPS were engaging in improper conduct, including but not limited to: (1) disregarding the IEPs of disabled students assigned to the Plaintiff's classroom; (2) failing to notify parents of the disabled students that their children were not receiving the required services outlined in each IEP; (3) failing to provide disabled special education students with teachers who have proper certifications and experience to teach such disabled special education students; (4) requiring the Plaintiff to perform the duties of a special education teacher, such as collecting data for disabled students, without any certification or training relative to performing such duties; and, (5) disregarding the Plaintiff's verbal and written notifications to the Defendants about the placement of a substitute special education teacher in her collaborative classroom.

26. On March 6, 2019, the Plaintiff informed Karen Bachus, Chairwoman of the Warwick School Committee, that she had spoken with Kerri Sorenson, an Education Specialist at the R.I. Department of Education ("RIDE"). During this conversation, the Plaintiff also stated that she intended to file a Special Education State Complaint with RIDE. Ms. Bachus then provided the information to Philip Thornton, Superintendent of WPS, Dr. Connelly, and Ms. Dambruch.

27. Following the Plaintiff's reports about the unlawful conduct described above, the Defendants retaliated against the Plaintiff.

28. On March 6, 2019, Dr. Connolly and Ms. Dambruch came to the Plaintiff's classroom to inquire about the level of services provided to one (1) of the disabled students in the Plaintiff's classroom and observed the students in the classroom for approximately twenty (20) minutes.

29. Within hours after Dr. Connolly and Ms. Dambruch met with the Plaintiff on March 6, 2019, the Plaintiff was contacted by Katherine Duncanson, Executive Director of Human Resources at Defendant WPS. Ms. Duncanson asked the Plaintiff if she would like to be placed on administrative leave as Dr. Connolly and Ms. Dambruch “thought [the Plaintiff] seemed stressed and needed a few days off.” The Plaintiff responded, “Absolutely not.” Ms. Duncanson then replied, “Then I am putting you out on administrative leave because two people made a complaint about you to DCYF.”

30. The so-called DCYF complaint referred to by Ms. Duncanson was a fabricated story and the Defendants failed and/or refused to properly investigate the false claims, including refusing to interview witnesses provided by the Plaintiff that would prove there was no wrongdoing.

31. On March 6, 2019, the Plaintiff was placed on administrative leave by the Defendants.

32. On March 7, 2019, the day after the Plaintiff was placed on administrative leave, the Defendants for the first time in nearly two (2) years assigned a substitute special education teacher to the Plaintiff’s classroom. This occurred one (1) day after Dr. Connolly directly told the Plaintiff again that there was a shortage of special education teachers in the City, and in the entire State.

33. On March 20, 2019, the Defendants contacted Darlene Netcoh, the Union President, about the Plaintiff returning to work in another 1st grade classroom at Oakland Beach Elementary School.

34. The Plaintiff declined to be reassigned to another classroom.

35. On March 24, 2019, the Plaintiff was told by her Union President that the Defendants now did not want to have her teaching in a classroom because they have “grave concerns” about her even being in a classroom.

36. As part of, and in furtherance of the Defendants' retaliation against the Plaintiff, the Defendants humiliated her in front of other School employees and engaged in other retaliatory conduct including contacting and unjustly influencing parents.

37. Due to the Defendants misconduct as described above, the Plaintiff has suffered from work-related stress and anxiety as well as associated symptoms such as elevated blood pressure and difficulty breathing. As a result of her symptoms, the Plaintiff has been required to seek medical treatment.

38. The Defendants have engaged in the ongoing policy, practice and procedure of violating the rights of its disabled students and of disregarding the appropriate identification, placement, and teaching of its disabled students.

39. The Defendants have also engaged in the ongoing policy, practice and procedure of discouraging, suppressing, or taking adverse employment actions against those, like the Plaintiff, who object to, protest, complain about, or disagree with the rights of disabled students.

40. The Defendants' unlawful discriminatory actions and/or omissions are in violation of the Rehabilitation Act and the RIWPA and were motivated by malice and ill will toward the Plaintiff, and the Defendants' actions were taken with reckless and callous indifference to the statutorily protected rights of the Plaintiff.

VI. Claims for Relief

41. Plaintiff incorporates in the counts below the allegations contained in paragraphs 1-40 above.

Count One **Violation of 29 U.S.C. §794**

42. The Defendants, by their individual and/or concerted acts and/or omissions, including, but not limited to, those described herein, violated the Rehabilitation Act insofar as the Defendants

discriminated and retaliated against the Plaintiff for reporting unlawful activity as described herein, thereby causing the Plaintiff to suffer harm and damages as aforesaid.

Count Two
Violation of R.I.G.L. §28-50-1, et seq.

43. The Defendants, by their individual and/or concerted acts and/or omissions, including, but not limited to, those described herein, violated the RIWPA insofar as the Defendants discriminated and retaliated against the Plaintiff for reporting unlawful activity as described herein, thereby causing the Plaintiff to suffer harm and damages as aforesaid.

VII. Prayers for Relief

WHEREFORE, the Plaintiff respectfully prays that this Court grant the following relief:

1. a declaratory judgment that the Defendants, in the manner described herein, violated the Rehabilitation Act of 1973, Section 504, 29 U.S.C. §794, *et seq.* and the Rhode Island Whistleblowers' Protection Act, R.I.G.L. §28-50-1, *et seq.*;
2. award the Plaintiff back pay, including incremental increases, and other benefits, plus prejudgment interest thereon;
3. award the Plaintiff compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses, plus prejudgment interest thereon;
4. award the Plaintiff reasonable attorney's fees and costs of litigation;
5. award the Plaintiff other appropriate equitable relief; and,
6. award such other and further relief as the Court deems just and proper.

VIII. Demand for Jury Trial

The Plaintiff hereby demands a trial by jury on all counts so triable.

IX. Designation of Trial Counsel

The Plaintiff hereby designates V. Edward Formisano, Esquire, Michael D. Pushee, Esquire, and Nicole J. Policastro, Esquire as trial counsel.

PLAINTIFF,
By her attorneys,
FORMISANO & COMPANY,

Dated: April 23, 2019

/s/ V. Edward Formisano
V. Edward Formisano (#5512)

/s/ Michael D. Pushee
Michael D. Pushee (#6948)

/s/ Nicole J. Policastro
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(401) 944-9691
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CERTIFICATION

I hereby certify that the within document has been electronically filed with the Court on this 23rd day of April, 2019 and is available for viewing and downloading from the ECF system.

/s/ V. Edward Formisano